

§ 386.48

49 CFR Ch. III (10–1–12 Edition)

(3) Objections to the form or written interrogatories are waived unless served in writing upon the party propounding them.

(c) *Effect of taking using depositions.* A party shall not be deemed to make a person his or her own witness for any purpose by taking his or her deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by any other party of a deposition as described in paragraph (a)(2) of this section. At the hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or her or by any other party.

§ 386.48 Medical records and physicians' reports.

In cases involving the physical qualifications of drivers, copies of all physicians' reports, test results, and other medical records that a party intends to rely upon shall be served on all other parties at least 30 days prior to the date set for a hearing. Except as waived by the Director, Office of Truck and Bus Standards and Operations, reports, test results and medical records not served under this rule shall be excluded from evidence at any hearing.

[50 FR 40306, Oct. 2, 1985, as amended at 53 FR 2036, Jan. 26, 1988; 65 FR 7756, Feb. 16, 2000]

§ 386.49 Form of written evidence.

All written evidence should be submitted in the following forms:

(a) A written statement of a person having personal knowledge of the facts alleged, or

(b) Documentary evidence in the form of exhibits attached to a written statement identifying the exhibit and giving its source.

[70 FR 28484, May 18, 2005]

§ 386.51 Amendment and withdrawal of pleadings.

(a) Except in instances covered by other rules, anytime more than 15 days prior to the hearing, a party may amend his/her pleadings by serving the amended pleading on the Assistant Ad-

ministrator or the administrative law judge, if one has been appointed, and on all parties. Within 15 days prior to the hearing, an amendment shall be allowed only at the discretion of the Administrative law judge. When an amended pleading is filed, other parties may file a response and objection within 10 days.

(b) A party may withdraw his/her pleading any time more than 15 days prior to the hearing by serving a notice of withdrawal on the Assistant Administrator or the Administrative Law Judge. Within 15 days prior to the hearing a withdrawal may be made only at the discretion of the Assistant Administrator or the Administrative Law Judge. The withdrawal will be granted absent a finding that the withdrawal will result in injustice, prejudice, or irreparable harm to the non-moving party, or is otherwise contrary to the public interest.

[50 FR 40306, Oct. 2, 1985, as amended at 70 FR 28484, May 18, 2005]

§ 386.52 Appeals from interlocutory rulings.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the Administrative Law Judge to the Assistant Administrator until the Administrative Law Judge's decision has been entered on the record. A decision or order of the Assistant Administrator on the interlocutory appeal does not constitute a Final Agency Order for the purposes of judicial review under § 386.67.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the Administrative Law Judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the Administrative Law Judge issues a decision on the request. If the Administrative Law Judge grants the request, the proceedings are stayed until the Assistant Administrator issues a decision on the interlocutory appeal. The Administrative Law Judge must grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.